



March 11, 1959
NUMBER 2000. 3

ASD(ISA)

Department of Defense Directive

SUBJECT International Interchange **of Patent** Rights and
Technical Information

References: (a) DOD Directive 2000.3, "**Technical**
Property Interchange Agreements",
dated **April** 15, 1954 (**cancelled**
herein) .

(b) Section 506 of the Mutual Security
Act of 1954, as amended (22 U.S. C.
1758)

(c) Section 413 (a) of the Mutual Security
Act of 1954, as amended (22 U.S. C.
1933(a))

(d) Section 414 of the Mutual Security
Act of 1954, as amended (22 U.S. C.
1934)

I. PURPOSE AND CANCELLATION.

The **purpose** of this directive is to restate Department of Defense **policy** concerning the international Interchange for defense purposes of patent rights and technical **informa-
tion.** Reference (a) is hereby superseded and cancel led.

II. SCOPE

This directive applies to **the** activities of **all De-
partment** of Defense personnel involved in the International interchange for defense purposes of patent rights and tech-
nical information. The policy prescribed herein applies to unclassified as well as classified Information, owned by the United States Government or privately owned, but

does not **apply** to patents, patent applications, and technical information **in** the field of atomic energy.

III. BACKGROUND.

A. Pursuant to the provisions of the Mutual **Security** Act of **1954**, as amended, and of predecessor legislation superseded by that Act, **the** United States has entered **into** agreements for the Interchange of Patent Rights and Technical Information for Defense Purposes with **Australia**, Belgium, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Turkey, and the United Kingdom. The agreements, which are published in the Treaties and Other International Act Series, are basically similar **in** substance but are not identical. Under the agreements -

1. Each government undertakes to facilitate the interchange of privately **owned** patent rights and of **technical** information through the medium of commercial relationships, to the extent permitted by the laws and security requirements of the contracting governments.

2. When technical information is supplied **by** one government to the other for information only, the recipient government undertakes to treat the information as disclosed **in** confidence and to use **its** best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner **to** obtain patent or similar statutory protection.

3. When technical information supplied by one government to the other discloses an Invention which is the subject of a patent or patent application held in secrecy in the country of **origin**, the recipient government undertakes to accord similar treatment to a corresponding patent application filed in that country.

4. When privately owned technical information is released by one government to the other and the recipient government uses or discloses the information, the owner shall, subject to the extent that the **owner** may be entitled thereto under the applicable law **and** subject to **arrangements** between the contracting governments regarding the assumption as between them of liability for compensation, **receive** prompt, just and effective compensation for such use and for any damages resulting from such use or disclosure.

5. Each government is entitled to use for defense purposes without cost any invention which the other government (Including government corporations) owns or to which it has the right to grant, a license to use, except to the extent that there may be liability to any private owner of an interest **in** the invention.

B. Each of these agreements establishes a Technical Property Committee, consisting of a representative of each contracting government, whose function It **is** to consider and make recommendations to the contracting governments on all matters relating to the subject of the agreement and to assist where appropriate in the negotiation of commercial or other agreements for **the** use of patent rights and technical information **in** the military assistance program.

1. The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (**USRO**), Paris, France, is the United States representative to the Technical Property Committees **in** Europe. The J-4, Hq, United States Forces Japan, Tokyo, Japan is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office of Assistant General Counsel, International Affairs, Office of the Secretary of Defense, **is** the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

2. These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs **is** responsible **within** the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative **in** Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative **in** Japan shall be transmitted to the Commanding General, United States Forces Japan. Such guidance **is** formulated, where appropriate, in the Interagency Technical Property Committee for Defense. The Interagency Technical Property Committee comprises representatives of **the Departments** of Defense, State, Commerce and Justice, the Government Patents Board, and the International Cooperation Administration. A representative of the

Assistant Secretary of Defense for International Security Affairs **is** the Chairman of **this** Committee. An Industry Advisory Committee established by the Department of Commerce furnishes advice upon request to the Interagency Technical Property Committee, and assists **in** the dissemination of information with respect to the interchange of patent rights and technical information for defense purposes.

co Department of Defense problems arising **in** the United States **in** connection with the Interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate **Military Department**.

IV. POLICY.

It **is** the **policy** of the Department of Defense to encourage and facilitate international interchanges of **patent** rights and technical information to further the common defense of the United States and friendly nations. In **achieving** this purpose, the following principles shall be observed.

A. Classified military information shall be released only through Government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that Policy.

B. In accordance with the Congressional policy prescribed by reference (c), and pursuant to the bilateral agreements referred to in paragraph III above, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible **in** order to encourage the participation of private enterprise in the Mutual Security Program, to *relieve* the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

C. In accordance with reference (d), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war **in** the United States Munitions List shall be subject to the regulations issued **by** the Secretary of State pursuant to reference (d) (Title 22 Code of Federal Regulations^{fi} Chapter 1, Subchapter M\). (The term "technical data" is used **in** those regulations to **describe technical** information relating to such articles).

D. Technical Information which might be privately owned may be released under paragraph IV. E. 1. or IV. E. 2. by Department of Defense Agencies to f **oreign** governments **if** any one of the following conditions are met:

1. The owner expressly consents to the proposed release;

2. The United States, by contract or otherwise, has acquired or **is** entitled to acquire, the information under circumstances which permit the proposed release; or

3. The Secretary of the Military Department concerned, or his designee, determines, under the authority of the Mutual Security Act of 1954, as amended, that -

a. The exigencies of the requirement for **re-lease** to **further** the common defense do not allow sufficient time to obtain the consent of the owner; or

b. The owner refuses consent and the best interests of the United States would be served by the release.

E. In accordance with the provisions of the agreements referred to **in** paragraph 111 **above**, ~~the~~ release to foreign governments by Department of Defense agencies of technical information which might be privately owned shall normally be **in** accord with the following two step procedure:

1. Release for information **only**.

2. Permission **for** manufacture, or use, for defense purposes.

F. 1. All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

"1. This information is accepted for defense purposes only.

"2. This Information shall be accorded substantially the same degree of security protection as such information has in the United States.

"3* This information shall not be disclosed to another country without the consent of *the* United States."

2. When technical Information which might be privately owned **is** released for information only, the **restrictive** marking shall also contain these additional notations :

"4. This **information is** accepted upon the understanding that It might be privately owned.

"5. This information **is** accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

"6. The recipient Government shall obtain the consent of the United States if It desires that this information be made available for manufacture, or use, for defense purposes."

G. When technical information **which** might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

1. notice of the release;
2. the identity of the recipient, if not contrary to security regulations;
- 3* notice that the recipient has been advised that the information might be privately owned; and
4. notice of the restrictions to which the release is subject.

V. CLAIMS FOR COMPENSATION.

A. With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, reference (b) provides the exclusive **remedy** for compensation for infringement **within** the United States of a patent **issued** by the United States **and** for damage resulting from the **disclosure** by the United States of privately owned technical Information.

B. The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by reference (b) to **enter** into agreements with

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claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from **time** to time. The Secretaries of the Military Departments are authorized to make successive **redelegations** in writing of this power and authority to any officer, employee, board or agent of their respective departments.

C* Funds appropriated for **military** assistance pursuant to the Mutual Security Act of 1954, as amended, **which** have been made available to a **Military** Department may be used to settle **claims** under reference (b). In addition, **in** those cases where the provisions of 10 U.S. C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such **claims**.

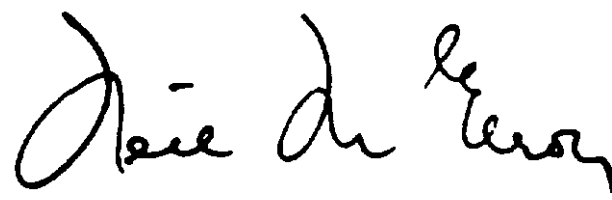
VI. IMPLEMENTATION

Copies of Implementing instructions issued by the Military Departments shall be furnished to the Assistant Secretary of Defense, International Security Affairs, within thirty days after the effective date of this directive. Any subsequent modifications of such **instructions** are also to be furnished to the Assistant Secretary of Defense, International Security Affairs, within thirty days after issuance.

VII. EFFECTIVE DATE

This directive is effective Immediately.

Enclosure - 1
Sections 506, 413(a), and 414
of the **Mutual** Security Act,
1954, as amended.


Secretary of Defense

PERTINENT PROVISIONS OF THE MUTUAL SECURITY ACT
OF 1954, AS AMENDED

SEC. 506. PATENTS AND TECHNICAL INFORMATION-

(a) As used in this section -

(1) the **term** "invention" means an invention or **discovery** covered by a patent issued by the United States; and

(2) the term "information" means **inf ormat ion** originated by or peculiarly within the knowledge of the owner thereof and those in **privity** with him, which is not available to the public and is subject to protection as property under recognized legal principles.

(b) Whenever, **in** Connection with the **furnishing** of any **assist-**
ance in furtherance of the purposes of this Act -

(1) use within the United States, without authorization by the owner, shall be made of an invention; or

(2) damage to the owner shall result **from** the disclosure of information by reason of acts of the United States or its officers or employees,

the exclusive remedy of the owner of such invention or information shall be by suit against the United States in the Court of **Claims** or in the District Court **of** the **United** States for the district in which such owner **is** a resident for reasonable and entire compensation for unauthorized use or disclosure. In any such suit the **United** States may **avail** itself of any and all defenses, general or special, that might be pleaded by any defendant in a like action.

(c) Before such suit against the United States has been instituted, the head of the appropriate United States Government agency, which has furnished any assistance in furtherance of the purposes of this Act, is authorized and empowered to enter into an agreement with the claimant, in full settlement and compromise of any **claim** against the United States hereunder.

(d) The provisions of the last sentence of section 1498 of title 28 of the **United** States Code shall apply to inventions and information covered by this section.

(e) Except as otherwise provided by law, no recovery shall be had for any infringement of a patent committed more than **six** years prior to the filing of the complaint or counterclaim for **infringement**. In the action, except that the **period** between the date of receipt by the Government of a written claim under subsection (c) above for compensation for **infringement** of a patent and the date of mailing by the Government of a notice to the **claimant** that his **claim** has been denied shall not **be** counted as part of the six years, unless suit is brought before the last-mentioned date.

SEC. 413. ENCOURAGEMENT OF FREE ENTERPRISE AND PRIVATE PARTICIPATION.

(a) The Congress recognizes the vital role of free enterprise in achieving **rising** levels of production and standards of **living** essential to the economic progress and defensive strength of the free world. Accordingly, it **is** declared to be the policy of the United States to encourage the efforts of other free nations to increase the flow of international trade, to foster **private initiative** and competition, to discourage monopolistic practices, to improve the technical efficiency of their industry, agriculture and commerce, **and** to strengthen free labor unions; and to encourage the contribution of United States enterprise toward economic strength of other free nations, through private trade and investment abroad, private participation **in** the programs carried out under this Act (including the use of private trade channels to the **maximum extent** practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this section.

SEC. 414. MUNITIONS CONTROL.

(a) **The** President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of **arms**, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.

(b) **As** prescribed in regulations issued under this section, **every** person who engages **in** the business of manufacturing, exporting, or importing any arms, ammunition, **or** implements of war, including technical data relating thereto, designated by the President under subsection (a) shall register with the United States Government agency charged with the administration of this section and in addition, shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the **return to the United States for sale In the United States (other than for the Armed Forces of the United States and its allies)** of any military firearms or **ammunition** of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance program of the United States, whether or not advanced *in* value or improved in condition *In* a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(c) Any person who willfully violates any provision of this section or any rule **or** regulation issued under this section, or who willfully, in a registration or license application, makes any **untrue** statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$25,000 or imprisoned not more than two years, or both.